Bail Slip: The Appellant / A-36 was directed to be released on bail by the order of the High Court dated 15-06-2007 in Crl.A.M.P.No. 927 of 2007 in Crl.A.No. 674 of 2007

IN THE HIGH COURT FOR THE STATE OF TELANGANA AT HYDERABAD

TUESDAY ,THE SEVENTEENTH DAY OF OCTOBER TWO THOUSAND AND TWENTY THREE

PRESENT

THE HONOURABLE SRI JUSTICE K.SURENDER

CRIMINAL APPEAL Nos : 674, 675 , 703, 715, 743, 744, 749 , 752, 755, 756, 790 & 1019 OF 2007

Crl.Appeal No. 674 of 2007

(Crl.Appeal Under Section 374 (2) of Cr.P.C. aggrieved by the order dated 11-06-2007 in CC No. 1 of 2003 on the file of the Court of the Special Judge Under the Prevention of Corruption Act for Speedy Trial of Cases of Embezzlement of Scholarship Amounts in Social Welfare Department, Etc., at Criminal Courts Complex, Nampally, Hyderabad)

Between:

D.V.Satyanarayana Pratap, S/o. Late Samba Murthy, Manager, State Bank of Patiala, Mumbai, R/o. Trimulgherry, Secunderabad

...APPELLANT/ A-36

AND

State of Andhra Pradesh, rep.by Public Prosecutor, High Court of A.P., Hyderabad.

...RESPODENTS

Counsel for the Appellant: SRI. CH. DHANAMJAYA

Counsel for the Respondent: THE PUBLIC PROSECUTOR

Bail Slip: The Appellant / A-24 was directed to be released on bail by the order of the High Court dated 15-06-2007 in Crl.A.M.P.No. 928 of 2007 in Crl.A.No. 675 of 2007

CRIMINAL APPEAL NO: 675 OF 2007

(Crl.Appeal Under Section 374 (2) of Cr.P.C. aggrieved by the order dated 11-06-2007 in CC No. 1 of 2003 on the file of the Court of the Special Judge Under the Prevention of Corruption Act for Speedy Trial of Cases of Embezzlement of Scholarship Amounts in Social Welfare Department, Etc., at Criminal Courts Complex, Nampally, , Hyderabad)

Between:

D. Swaroopa Rani, W/o D. Shankar Rao, Housewife, R/o Plot No. 131, Kamalapuri Colony, Phase-III, Srinagar Colony, Hyderabad

...APPELLANT

AND

The State of Andhra Pradesh,, rep. by its Public Prosecutor, High Court of A.P., at Hyderabad.

...RESPODENT

Counsel for the Appellant: SRI. K. L. B. KUMAR

Counsel for the Respondent: THE PUBLIC PROSECUTOR

Bail Slip: The Appellant / A- 3 & 7 were directed to be released on bail by the order of the High Court dated 15-06-2007 in Crl.A.M.P.No. 970 of 2007 in Crl.A.No. 703 of 2007

CRIMINAL APPEAL NO: 703 OF 2007

(Crl.Appeal Under Section 374 (2) of Cr.P.C R/w. Sec. 382 aggrieved by the order dated 11-06-2007 in CC No. 1 of 2003 on the file of the Court of the Special Judge Under the Prevention of Corruption Act for Speedy Trial of Cases of Embezzlement of Scholarship Amounts in Social Welfare Department, Etc., at Criminal Courts Complex, Nampally, Hyderabad)

Between:

1. Ratilal Laliji Praveen Chander, S/o Ratilal Laliji, Auditor in PAO R/o H.No.29-1414/73, Kakatiya Nagar, Neredmet, R.R.Dist.
2. G.Indrasena, S/o Late Somappa, Superintendent in PAO R/o Flat No.157, Teachers Colony, Tirumalgherry, Secunderabad.

...APPELLANTS/ Accused Nos. 3 & 7

AND

The State of A.P.,, rep. by its Public Prosecutor, High Court of A.P., Hyderabad.

...RESPODENT/ Complainant

Counsel for the Appellants: SRI. V. SURENDER RAO

Counsel for the Respondent: THE PUBLIC PROSECUTOR

CRIMINAL APPEAL NO: 715 OF 2007

(Crl.Appeal Under Section 374 (2) of Cr.P.C aggrieved by the order dated 11-06-2007 in CC No. 1 of 2003 on the file of the Court of the Special Judge Under the Prevention of Corruption Act for Speedy Trial of Cases of Embezzlement of Scholarship Amounts in Social Welfare Department, Etc., at Criminal Courts Complex, Nampally, , Hyderabad)

Between:

1. Pamula Gangadharam,(A-42, Died), H.No. 8-2-603/A/113, Singadi Kunta, Banjara Hills,
2. Pamula Sasirekha,, W/o. Late Pamula Gangadharam, R/o. Singadikunta No.10, Banjarahills, Hyderabad
3. P. Mohan Kumar, S/o. Late Pamula Gangadharam, R/o. Singadikunta No.10, Banjarahills, Hyderabad
4. P. Uday Kumar, S/o. Late Pamula Gangadharam, R/o. Singadikunta No.10, Banjarahills, Hyderabad
5. P. Amardeep, S/o. Late Pamula Gangadharam, R/o. Singadikunta No.10, Banjarahills, Hyderabad

...APPELLANTS

(As per Court Order dated 11-07-2023 in I.A.No. 1 of 2018 in Crl.A.No. 715 of 2007 L.R. brought on record as Appellant Nos. 2 to 5)

AND

The State of A.P.,, rep.by Public Prosecutor, High Court of A.P., Hyderabad.

...RESPODENT

Counsel for the Appellants: SRI. K. SURESH REDDY

Counsel for the Respondent: THE PUBLIC PROSECUTOR

CRIMINAL APPEAL NO: 743 OF 2007

(Crl.Appeal Under Section 374 (2) of Cr.P.C aggrieved by the order dated 11-06-2007 in CC No. 1 of 2003 on the file of the Court of the Special Judge Under the Prevention of Corruption Act for Speedy Trial of Cases of Embezzlement of Scholarship Amounts in Social Welfare Department, Etc., at Criminal Courts Complex, Nampally, , Hyderabad)

Between:

1. Ch.Suryanarayana, (A10) (died) S/o Ch.Rama.Rao, A.P.A.O. R/o N.G.Os Colony, C.605 `Sector-4, Vanasthalipuram, R.R.District.
2. Smt. Ch. Valli Kumar, W/o. Late Suryanarayana
3. Smt. Ch. Lakshmi Kumari, W/o. Sri G. Srinivasa Rao
4. Smt. Ch. Usha Kalyani W/o. I. Srinivas

(All are R/o. C- 605, NGO's Colony, Vanasthalipuram, Hyderabad)

(Since Respondent No. 1 died . Respondents Nos. 2 to 4 are brought on records and granted leave to continue this Crl.Appeal No. 743 of 2007 vide Court Order dated 6-4-2010 in Crl.A.M.P.No. 665 of 2010 in this Crl.Appeal)

...APPELLANTS

AND

The State of A.P., rep. by its Public Prosecutor, High Court of A.P., Hyderabad.

...RESPODENTS

Counsel for the Appellants: Smt. C. VASUNDHARA REDDY

Counsel for the Respondent: THE PUBLIC PROSECUTOR

CRIMINAL APPEAL NO: 744 OF 2007

(Crl.Appeal Under Section 374 (2) of Cr.P.C aggrieved by the order dated 11-06-2007 in CC No. 1 of 2003 on the file of the Court of the Special Judge Under the Prevention of Corruption Act for Speedy Trial of Cases of Embezzlement of Scholarship Amounts in Social Welfare Department, Etc., at Criminal Courts Complex, Nampally, , Hyderabad)

Between:

Uradi Santosh Kumar, S/o. Balaiah, DSWO, R/o. H.No. 3-6-231, Magdhum Margh, Himayath Nagar,

...APPELLANT/ A- 5

AND

The State, through Asst. Commissioner of Police,, CCS., DD., Hyderabad, rep.by Public Prosecutor , High Court of A.P., Hyderabad.

...RESPODENT

Counsel for the Appellant: SRI. ENUGANTI SUDHANSHU RAO

Counsel for the Respondent: THE PUBLIC PROSECUTOR

CRIMINAL APPEAL NO: 749 OF 2007

(Crl.Appeal Under Section 374 (2) of Cr.P.C aggrieved by the order dated 11-06-2007 in CC No. 1 of 2003 on the file of the Court of the Special Judge Under the Prevention of Corruption Act for Speedy Trial of Cases of Embezzlement of Scholarship Amounts in Social Welfare Department, Etc., at Criminal Courts Complex, Nampally, , Hyderabad)

Between:

1. Avisetti Prasada Rao, (A-20), S/o Venkat Reddy, Retired Asst. Pay and Accounts Officer, R/o H.No. 9-4-116/67, Balreddy Nagar Colony, Tolic Chowki,
2. Bhatla Penumarthi Seshagiri Rao, (A-22), S/o B. Narayana Rao, Retired Superintendent, R/o H.No. 31-530, Plot No. 120, Indira Nagar, M.D.Farm Road,
3. Krishna Kumar, (A-41), S/o Late Anandam, Retired Dy. Pay and Accounts Offricer, R/o H.No. 18-5-46/2, Laldarwaza, Hyderabad.

...APPELLANT/ Accused Nos. 20, 22, 41

AND

The State of Andhra Pradesh, rep. by its Public Prosecutor, High Court of A.P., at Hyderabad, through Asst. Commissioner of Police, Central Crime Section, Detective Department, Hyderabad.

...RESPODENT/ Complainant

Counsel for the Appellants: SRI. B. NALIN KUMAR

Counsel for the Respondent: THE PUBLIC PROSECUTOR

CRIMINAL APPEAL NO: 752 OF 2007

(Crl.Appeal Under Section 374 (2) of Cr.P.C aggrieved by the order dated 11-06-2007 in CC No. 1 of 2003 on the file of the Court of the Special Judge Under the Prevention of Corruption Act for Speedy Trial of Cases of Embezzlement of Scholarship Amounts in Social Welfare Department, Etc., at Criminal Courts Complex, Nampally, , Hyderabad)

Between:

Malyala Anjaiah, (A6), S/o Late M.Mallaiah, Govt. Servant R/o H.No.12-11-1366, Boudhanagar, Warasiguda, Secunderabad. (Died per LR"s)

1. Malayala Srikanth S/o. Anjaiah aged about 46 years, Occ: Pvt. Employee R/o. 12-11-1368 , Boudha Nagar, Warasiguda, Secunderabad, Hyderabad.
2. Malyala Maruthi, W/o. Late M. Anjaiah , aged about 71 years, Occ: House wife R/o. 12-11-1368 , Boudha Nagar, Warasiguda, Secunderabad, Hyderabad
3. Gandani Gayatri, W/o. Gandanai Srinivas, Age: 49 years, Occ: Housewife, R/o. 12-11-1368, Boudha Nagar, Warasiguda, Secunderabad, Hyderabad.
4. Malyala Sridhar, S/o. M. Anjaiah , aged about 43 years, Occ: Business, R/o. 12-11-1368, Boudha Nagar, Warasiguda, Secunderabad , Hyderabad. ..

As per the Court Order dated 18-08-2023 inI.A. No. 1 / 2023 in Crl.A.No. 752 of 2007 L.R. Brought on record.)

...APPELLANTS

AND

The State of A.P., rep. by its Public Prosecutor, High Court ., Hyderabad.

...RESPODENT

Counsel for the Appellants: SRI. P. VAMSHEEDHAR REDDY

Counsel for the Respondent: THE PUBLIC PROSECUTOR

CRIMINAL APPEAL NO: 755 OF 2007

(Crl.Appeal Under Section 374 (2) of Cr.P.C aggrieved by the order dated 11-06-2007 in CC No. 1 of 2003 on the file of the Court of the Special Judge Under the Prevention of Corruption Act for Speedy Trial of Cases of Embezzlement of Scholarship Amounts in Social Welfare Department, Etc., at Criminal Courts Complex, Nampally, Hyderabad)

Between:

Kadimi Venkateswara Rao,, S/o Late K.Maraiah, Superintendent in PAO Office R/o B-93, Madhura Nagar, Hyderabad. **...APPELLANT/ Accused No. 4**

AND

The State of A.P., rep. by its Public Prosecutor, High Court ., Hyderabad.

...RESPODENT

Counsel for the Appellant: SRI. T. PRADYUMNA KUMAR REDDY

Counsel for the Respondent: THE PUBLIC PROSECUTOR

CRIMINAL APPEAL NO: 756 OF 2007

(Crl.Appeal Under Section 374 (2) of Cr.P.C aggrieved by the order dated 11-06-2007 in CC No. 1 of 2003 on the file of the Court of the Special Judge Under the Prevention of Corruption Act for Speedy Trial of Cases of Embezzlement of Scholarship Amounts in Social Welfare Department, Etc., at Criminal Courts Complex, Nampally, Hyderabad)

Between:

B.Sudhakar (died) (A-35), S/o Maruthi Rao, Govt. Servant R/o 89-C, Vengalrao Nagar, Hyderabad.

B. Saritha D/o. B. Sudhakar age , 35 years Occ: House Hold R/o. 44-14/7 , Road No. 6 , Srinivasapuram, Gurramguda , 5015010

(As per Court Order dated 18/08/2023 in I.A. No. 2 of 2023 in Crl.A.No. 756 of 2007 L.R. Brought on Record.) **...APPELLANT/ Accused 35**

AND

The State of A.P., rep. by its Public Prosecutor, High Court of A.P., Hyderabad.

...RESPONDENT

Counsel for the Appellant: SRI. H. SUDHAKARA RAO

Counsel for the Respondent: THE PUBLIC PROSECUTOR

CRIMINAL APPEAL NO: 790 OF 2007

(Crl.Appeal Under Section 374 (2) of Cr.P.C aggrieved by the order dated 11-06-2007 in CC No. 1 of 2003 on the file of the Court of the Special Judge Under the Prevention of Corruption Act for Speedy Trial of Cases of Embezzlement of Scholarship Amounts in Social Welfare Department, Etc., at Criminal Courts Complex, Nampally, Hyderabad)

Between:

R.Mothya Naik,, S/o R.Keshya Naik, Warden in Social Welfare Department R/o Flat No.315, Sanali Heavens Apartments, Ameerpet, Hyderabad.

...APPLLANT/ Accused No. 1

AND

The State of A.P.,, rep. by its Public Prosecutor, High Court ., Hyderabad.

...RESPODENT

Counsel for the Appellant: SRI. SREENIVASA RAO RAVULAPATI

Counsel for the Respondent: THE PUBLIC PROSECUTOR

Bail Slip: The Appellant / A-2 was directed to be released on bail by the order of the High Court dated 15-06-2007 in Crl.A.M.P.No. 2369 of 2007 in Crl.A.No. 1019 of 2007

CRIMINAL APPEAL NO: 1019 OF 2007

(Crl.Appeal Under Section 378 (4) of Cr.P.C aggrieved by the order dated 11-06-2007 in CC No. 1 of 2003 on the file of the Court of the Special Judge Under the Prevention of Corruption Act for Speedy Trial of Cases of Embezzlement of Scholarship Amounts in Social Welfare Department, Etc., at Criminal Courts Complex, Nampally, Hyderabad)

Between:

D.Shankar Rao, S/o. Rajaiah, R/o. Plot No.131,Phase -III, Kamalapuri Colony, Hyderabad. **...APPELLANT/ Accused**

AND

The State of Andhra Pradesh, rep.by the Public Prosecutor, High Court , Hyderabad. **...RESPONDENT**

Counsel for the Appellant: SRI CH. DHANAMJAYA

Counsel for the Respondent: THE PUBLIC PROSECUTOR

The Court delivered the following: Common Judgment

THE HONOURABLE SRI JUSTICE K.SURENDER

CRIMINAL APPEAL Nos.674, 675, 703, 715, 743, 744, 749, 752, 755, 756, 790 & 1019 OF 2007

COMMON JUDGMENT:

1. Criminal Appeal No.674 of 2007 is filed by A36, Crl.A.No.675 of 2007 is filed by A24, Crl.A.No.703 of 2007 is filed by A3 & A7; Crl.A.No.715 of 2007 is filed by A42, Crl.A.No.743 of 2007 is filed by A10, Crl.A.No.744 of 2007 is filed by A5, Crl.A.No.749 of 2007 is filed by A20, A22 & A41, Crl.A.No.752 of 2007 is filed by A6, Crl.A.No.755 of 2007 is filed by A4, Crl.A.No.756 of 2007 is filed by A35, Crl.A.No.790 of 2007 is filed by A1 and Crl.A.No.1019 of 2007 is filed by A2, questioning their conviction in CC.No.1 of 2003, dated 11.06.2007 recorded by the Special Judge under the Prevention of Corruption Act for Speedy Trial of Cases of Embezzlement of Scholarship amounts in Social Welfare Department, Etc. at Criminal Courts Complex, Nampally, Hyderabad. Accused Nos.A3, A4, A20, A22, A34, A35, A36, A41 & A42 for the offences punishable under Sections 109 r/w 409, 109 r/w 419, 109 r/w 420, 109 r/w 467, 109 r/w 468, 109 r/w 471 IPC, A24 is convicted and sentenced under Sections 109 r/w 409, 109 r/w 419, 109 r/w 420, 109 r/w 467, 109 r/w 468, 109 r/w

471 and Section 109 r/w 201 of IPC and A5, A6, A7 & A10 were convicted and sentenced under Sections 109 r/w 419, 109 r/w 420, 109 r/w 467, 109 r/w 468, 109 r/w 471 IPC; convicting and sentencing Accused No.1 for the offences punishable under Sections 419, 420, 467, 468, 409, 471 of the Indian Penal Code and A2 is convicted and sentenced under Sections 409, 419, 420, 467, 468 and 471 IPC.

2. Since all the appeals are arising out of common judgment in CC No.1 of 2003, all these appeals are being heard together and disposed by way of this Common Judgment.

3. The Central Crime Station, Detective Department, Hyderabad investigated into the scholarship scam case regarding pre-metric and post-metric scholarships. Three cases in all were filed. Two cases pertaining to post-metric scholarships (C.C.No.1 of 2003 and CC No.3 of 2003) and one case pertaining to pre-metric scholarship (CC No.2 of 2003). All the three cases were tried by the Special Judge under the Prevention of Corruption Act for Speedy Trial of Cases of Embezzlement of Scholarship Amounts in Social Welfare

Department, etc. at Criminal Courts Complex, Red Hills,Nampally, Hyderabad.

4. The case is that the accused A1 to A43 in CC No.1 of 2003 herein are from the office of the Social Welfare Department, Pay and Accounts Department, Nationalized Banks and also private persons, who are kith and kin of the accused. All of them have conspired to cheat the Government. Pursuant to the alleged conspiracy, A1 and A2 have floated bogus colleges and claimed scholarships in the names of those colleges. A1 and A2 prepared forged and fabricated post-metric scholarships, bills, which is Form 103. The said Form 103 which are scholarships bills were prepared in the name of bogus colleges by preparing sanction proceedings and forging the signatures of District Social Welfare Officers (DSWOs), District Backward Classes Welfare Officers (DBCWOs), District Tribal Welfare Officers (DTWOs) and also forging the list of SC, ST and BC communities. The signatures of fictitious principals were forged on the bills. A2 also forged the bills and signatures of bogus colleges by preparing post-metric scholarship bills in

Form 103. Both A1 and A2 opened bank accounts in the name of 25 fictitious colleges. After having produced the bills in the Pay and Accounts Office and after processing, cheques were taken and deposited into Bank accounts and money was withdrawn. The total loss to the Government was Rs.26,38,46,476/-.

5. The learned Special Judge mainly relied on the evidence of witnesses who stated about the non-existent colleges and also opening of accounts in Andhra Bank and other banks.

6. Learned Special judge also placed reliance on the bank transactions whereby the cheques were deposited and amounts were withdrawn. Further, the writings and signatures of the accused which were identified formed basis for conviction. Out of 43 accused, A1, A2 worked in Social Welfare Department, A3 and A4 were Auditors in Deputy Pay and Accounts Office, A5 worked as Assistant Social Welfare Officer (ASWO), A6 worked as Assistant Backward Classes Welfare Officer (ABCWO), A7 worked as Superintendent in Deputy Pay and Accounts Office, A10 worked as Assistant Pay

and Accounts Officer in Deputy Pay and Accounts Office, A20 worked as Assistant Pay and Accounts Officer in Deputy Pay and Accounts Office, A22 worked as Superintendent in Deputy Pay and Accounts Office, A24 is the wife of A2, A34 and A35 worked as Superintendents in Deputy Pay and Accounts Office, A36 worked as Accountant in State Bank of Patiala, R.P.Road branch. A41 worked as Deputy Pay and Accounts Officer and A42 worked as District Tribal Welfare Officer (TDWO), Hyderabad.

7. Acquitted accused are A8-District Tribal Welfare Officer, A9- District Tribal Welfare Officer, A11-Junior Assistant in Tribal Welfare Office, A12-Welder, A13 (wife of A12), A14-Inspector of Branches, Andhra Bank, A15-Branch Manager, Andhra Bank, A16-Business man, A17-Deputy Director, Social Welfare Department, A18-Branch Manager, Andhra Bank, A19-Branch Manager, SBH, A21-retired PAO, A23-wife of A1, A25-son of A2, A30-Auditor (Computer operator) in Deputy PAO office, A31-Assistant Auditor in PAO, A37-Retired Deputy

PAO, A38-Retired Superintendent, PAO, A40, A43. Proceedings against A26 to A29 were quashed by High Court.

8. Totally 122 charges were framed for the offences under Sections 419, 420, 409, 467, 468, 471 and 109 of IPC against the accused. The charges were framed on the basis of the bills produced in Pay & Accounts Office, opening of accounts in banks, withdrawal of amounts from the Bank and fabrication of sanction proceedings and filed along with Form 103 bills, which were also fabricated.

9. As already stated, the crux of the allegation is that the scholarships meant for SC, ST, BC students were swindled by submitting fake scholarship application forms in the names of fictitious and bogus educational institutions with fictitious student names as belonging to SC, ST and BC communities, sanction proceedings of scholarships, stamp receipts, bills etc., were all fabricated.

SANCTION U/S.197 Cr.P.C:

10. Learned Special Judge has framed point No.45 to assert whether the prosecution is bad in respect of accused for want of sanction orders under Section 197 of Cr.P.C.

11. Answering the said point, learned Special Judge has found that though sanction orders were obtained from the competent authorities against A1 to A10, A20 to A22, A30, A31, A34, A35, A37, A38, A41 and A43, the prosecution failed to bring on record the said sanction orders.

12. However, the learned Special Judge found that the said sanction orders were not necessary in view of the judgment of Hon'ble Supreme Court in the case of **Prakash Singh Badal and another v. State of Punjab and others**[1], wherein it was held as follows:

> *"The offence of cheating under section 420 or for that matter offences relatable to sections 467, 468, 471 and 120-B can by no stretch of imagination by their very nature be regarded as having been committed by any public servant while acting or purporting to act in discharge of official duty. In such case, official status only provides an opportunity for commission of the offence."*

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[1] (2007) 1 SCC 1

13. Having extracted the said paragraph, learned Special Judge found that there is no necessity for sanction to be obtained under Section 197 of Cr.P.C to prosecute the officials and it cannot be said that prosecution is bad for want of sanction order.

14. Firstly, there is no explanation as to why the prosecution failed to bring on record the sanction orders which were obtained against the accused. Sanction against public servant is an act necessitated under Section 197 of Cr.P.C to protect officers from false criminal prosecutions. Learned Special Judge has committed an error in finding that there was no necessity reducing sanctity of Section 197 of Cr.P.C for obtaining sanction orders and its object redundant. Section 197 of Cr.P.C or similar provision under the Prevention of Corruption Act were introduced by the legislature to prevent and protect public servants from being criminally prosecuted, which acts amounted to criminal offences, during discharge of their official duties.

15. Recently, the Hon'ble Supreme Court in the case of **A.Srinivasulu v. State rep. by the Inspector of Police**[2] clarified that the observations of the Hon'ble Supreme Court in **Prakash Singh Badal's** case (supra), held as under:

> "**50.** But the above contention in our opinion is far-fetched. The observations contained in paragraph 50 of the decision in *Parkash Singh Badal* (supra) are too general in nature and cannot be regarded as the ratio flowing out of the said case. If by their very nature, the offences under sections 420, 468, 471 and 120B cannot be regarded as having been committed by a public servant while acting or purporting to act in the discharge of official duty, the same logic would apply with much more vigour in the case of offences under the PC Act. Section 197 of the Code does not carve out any group of offences that will fall outside its purview. Therefore, the observations contained in para 50 of the decision in *Parkash Singh Badal* cannot be taken as carving out an exception judicially, to a statutory prescription. In fact, ***Parkash Singh Badal*** cites with approval the other decisions (authored by the very same learned Judge) where this Court made a distinction between an act, though in excess of the duty, was reasonably connected with the discharge of official duty and an act which was merely a cloak for doing the objectionable act. Interestingly, the proposition laid down in *Rakesh Kumar Mishra* (supra) was distinguished in paragraph 49 of the decision in *Parkash Singh Badal*, before the Court made the observations in paragraph 50 extracted above.
>
> **51.** No public servant is appointed with a mandate or authority to commit an offence. Therefore, if the observations contained in paragraph 50 of the decision in *Parkash Singh Badal* are applied, any act which constitutes an offence under any statute will go out of the purview of an act in the discharge of official duty. The requirement of a previous sanction will thus be rendered redundant by such an interpretation."

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[2] 2023 SCC OnLine SC 900

16. The Hon'ble Supreme Court observed that the requirement of previous sanction would be rendered redundant if it is interpreted that every act of which a public servant is alleged to have committed would be without protection, which the legislature thought it fit to protect public servants who were discharging their duties, which are reasonably connected to their official functions.

17. The prosecution has committed an error in not bringing the sanction orders on record. The application or non-application of mind in granting sanction and whether the acts alleged in the present case were connected with their official duties or not would have been part of the record. Even before discussing the evidence, the learned Special Judge concludes that the accused/public servants have indulged in the alleged acts of cheating, criminal misappropriation and forgery and sanction to criminally prosecute public servants was not necessary.

18. None of the official witnesses have stated that the bills which were brought on record were fake and fabricated bills or

that the officials have fraudulently committed such acts of producing fabricated bills, having knowledge about the alleged falsity of the bills. The witnesses from Backward Class Welfare Department, Social Welfare Department, Tribal Welfare Department and Pay & Accounts Office, stated that no infirmity was detected in any of the bills and procedure adopted while passing bills.

19. The admissibility of the evidence produced by the prosecution and documents marked would be discussed in the subsequent paragraphs, which has a bearing on the application of mind by the Competent Authority granting sanction to prosecute public servants.

20. Even prior to discussing the evidence in the present case, it is necessary that the law laid down by the Hon'ble Supreme Court for appreciating evidence has to be gone into. A reading of the evidence of witnesses and findings of the learned Special Judge, the basics of admissibility of evidence in criminal trial have been utterly disregarded and on the

basis of inadmissible evidence, conclusions were drawn in the judgment.

21. The case is one of circumstantial evidence. The five golden principles constituting panchsheel to prove a case based on circumstantial evidence were summed up in **Sharad Birdhichand Sarda v. State of Maharashtra**[3], which reads as follows:

> *"153. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:*
>
> *(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established. It may be noted here that this Court indicated that the circumstances concerned "must or should" and not "may be" established. There is not only a grammatical but a legal distinction between "may be proved" and "must be or should be proved" as was held by this Court in Shivaji Sahabrao Bobade v. State of Maharashtra [(1973) 2 SCC 793 : 1973 SCC (Cri)1033 : 1973 Crl LJ 1783] where the observations were made: [SCC para 19, p. 807: SCC (Cri) p. 1047]*
>
> *"Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions."*
>
> *(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,*
>
> *(3) the circumstances should be of a conclusive nature and tendency,*

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[3] (1984) 4 SCC 116

(4) they should exclude every possible hypothesis except the one to be proved, and

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused."

22. In **Neeraj Dutta v. State (Government of NCT of Delhi)**[4] the Hon'ble Supreme Court held as follows:

"52. Again, oral evidence can be classified as original and hearsay evidence. Original evidence is that which a witness reports himself to have seen or heard through the medium of his own senses. Hearsay evidence is also called derivative, transmitted, or second-hand evidence in which a witness is merely reporting not what he himself saw or heard, and not what has come under the immediate observation of his own bodily senses, but what he has learnt in respect of the fact through the medium of a third person. Normally, a hearsay witness would be inadmissible, but when it is corroborated by substantive evidence of other witnesses, it would be admissible vide Mukhtiar Singh [Mukhtiar Singh v. State of Punjab, (2017) 8 SCC 136 : (2017) 3 SCC (Cri) 607] .

55. Documentary evidences, on the other hand, are to be proved by the production of the documents themselves or, in their absence, by secondary evidence under Section 65 of the Act. Further, facts showing the existence of any state of mind, such as intention, knowledge, good faith, negligence, or ill will need not be proved by direct testimony. It may be proved inferentially from conduct, surrounding circumstances, etc. (See Sections 8 and 14 of the Evidence Act.)

56. Insofar as oral evidence is concerned, this Court in State of Rajasthan v. Babu Meena [State of Rajasthan v. Babu Meena, (2013) 4 SCC 206 : (2013) 2 SCC (Cri) 364] ("Babu Meena") has classified the same into three categories : (i) wholly reliable; (ii) wholly unreliable, and; (iii) neither wholly reliable nor wholly unreliable. While an accused can be convicted on the sole testimony of a wholly reliable

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[4] (2023) 4 Supreme Court Cases 731

witness, the uncorroborated evidence of a wholly unreliable testimony of a witness must result in an acquittal.

57. Section 60 of the Evidence Act requires that oral evidence must be direct or positive. Direct evidence is when it goes straight to establish the main fact in issue. The word "direct" is used in juxtaposition to derivative or hearsay evidence where a witness gives evidence that he received information from some other person. If that person does not, himself, state such information, such evidence would be inadmissible being hearsay evidence. On the other hand, forensic procedure as circumstantial or inferential evidence or presumptive evidence (Section 3) is indirect evidence. It means proof of other facts from which the existence of the fact in issue may be logically inferred. In this context, the expression "circumstantial evidence" is used in a loose sense as, sometimes, circumstantial evidence may also be direct.

58. Although the expression "hearsay evidence" is not defined under the Evidence Act, it is, nevertheless, in constant use in the courts. However, hearsay evidence is inadmissible to prove a fact which is deposed to on hearsay, but it does not necessarily preclude evidence as to a statement having been made upon which certain action was taken or certain results followed such as evidence of an informant of the crime.

61. Section 62 of the Evidence Act defines primary evidence to mean the documents itself produced for the inspection of the court. If primary evidence is available, it would exclude secondary evidence. Section 63 of the Evidence Act deals with secondary evidence and defines what it means and includes. Section 63 mentions five kinds of secondary evidence, namely—

(i) Certified copies given under the provisions hereinafter contained;

(ii) Copies made from the original by mechanical processes which in themselves ensure the accuracy of the copy, and copies compared with such copies;

(iii) Copies made from or compared with the original;

(iv) Counterparts of documents as against the parties who did not execute them; and

(v) Oral accounts of the contents of a document given by some person who has himself seen it.

69. One of the modes through which a fact can be proved. But, that is not the only mode envisaged under the Evidence Act. Proof of the fact

depends upon the degree of probability of it having existed. The standard required for reaching the supposition is that of a prudent man acting in any important matter concerning him."

23. In **Sherimon v. State of Kerala**[5], the Hon'ble Supreme Court held as follows:

"17.The gist of the offence of conspiracy is the agreement between two and more persons to do or cause to be done an illegal act or a legal act by illegal means. There must be meeting of minds resulting in an ultimate decision taken by the conspirators regarding commission of the crime."

24. In **P.K.Narayanan v. State of Kerala**[6], the Hon'ble Supreme Court held as follows:

"9..... An offence of conspiracy cannot be deemed to have been established on mere suspicion and surmises or inferences which are not supported by cogent evidence.

10. The ingredients of this offence are that there should be an agreement between the persons who are alleged to conspire and the said agreement should be for doing of an illegal act or for doing by illegal means an act which by itself may not be illegal. Therefore the essence of criminal conspiracy is an agreement to do an illegal act and such an agreement can be proved either by direct evidence or by circumstantial evidence or by both and it is a matter of common experience that direct evidence to prove conspiracy is rarely available. Therefore the circumstances proved before, during and after the occurrence have to be considered to decide about the complicity of the accused. But if those circumstances are compatible also with the innocence of the accused persons then it cannot be held that the prosecution has successfully established its case. Even if some acts are proved to have been committed it must be clear that they were so committed in pursuance of an agreement made between

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[5](2011) 10 Supreme Court Cases 768

[6](1995) 1 Supreme Court Cases 142

the accused who were parties to the alleged conspiracy. Inferences from such proved circumstances regarding the guilt may be drawn only when such circumstances are incapable of any other reasonable explanation. From the above discussion it can be seen that some of the circumstances relied upon by the prosecution are not established by cogent and reliable evidence. Even otherwise it cannot be said that those circumstances are incapable of any other reasonable interpretation."

25. In **Jethsur Suranghai v. State of Gujarat**[7], the Hon'ble Supreme Court held as follows:

"9. Having gone through the judgment of the High Court.....In our opinion, the contention raised by the counsel for the appellant is well-founded and must prevail. With due respect what the High Court seems to have missed is that in a case like this where there was serious defalcation of the properties of the Sangh, unless the prosecution proved that there was a close cohesion and collusion between all the accused which formed the subject matter of a conspiracy, it would be difficult to prove the dual charges particularly against the appellant (A-1). The charge of conspiracy having failed, the most material and integral part of the prosecution story against the appellant disappears...."

26. In **State of U.P. v. Wasif Haider**[8], the Hon'ble Supreme Court held as follows:

"22. In the instant appeals before us, the prosecution has failed to link the chain of circumstances so as to dispel the cloud of doubt about the culpability of the respondent-accused. It is a well-settled principle that a suspicion, however grave it may be cannot take place of proof i.e. there is a long distance between "may be" and "must be", which must be traversed by the prosecution to prove its case beyond reasonable doubt [see Narendra Singh v. State of

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[7] 1984 (Supp) Supreme Court Cases 207

[8] (2019) 2 SCC 303

M.P. [Narendra Singh v. State of M.P., (2004) 10 SCC 699 : 2004 SCC (Cri) 1893]].

23. This Court in Kailash Gour v. State of Assam [Kailash Gour v. State of Assam, (2012) 2 SCC 34 : (2012) 1 SCC (Cri) 717] , has held that : (SCC pp. 50-51, para 44)

> *"44. The prosecution, it is axiomatic, must establish its case against the accused by leading evidence tha tis accepted by the standards that are known to criminal jurisprudence regardless of whether the crime is committed in the course of communal disturbances or otherwise. In short, there can only be one set of rules and standards when it comes to trials and judgment in criminal cases unless the statute provides for anything specially applicable to a particular case or class of cases."*

24. In the present case, the cumulative effect of the aforesaid investigative lapses has fortified the presumption of innocence in favour of the respondent-accused. In such cases, the benefit of doubt arising out of a faulty investigation accrues in favour of the accused."

27. In **Ramnivas v. State of Haryana**[9], the Hon'ble Supreme Court held as follows:

> *"20. It is settled law that the suspicion, however strong, it may be, cannot take the place of proof beyond reasonable doubt. An accused cannot be convicted on the ground of suspicion, no matter how strong it is. An accused is presumed to be innocent unless proved guilty beyond a reasonable doubt.*
>
> *21. In the preset case, we find that the prosecution has utterly failed to establish the chain of events which can be said to exclusively lead to the one and only conclusion, i.e., the guilt of the accused...."*

28. In **A.Srinivasulu v. State rep. by the Inspector of Police**[10], the Hon'ble Supreme Court held as follows:

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[9] (Criminal Appeal No.25 of 2012 dated 11.08.2022)

"50. But the above contention in our opinion is far-fetched. The observations contained in paragraph 50 of the decision in Parkash Singh Badal (supra) are too general in nature and cannot be regarded as the ratio flowing out of the said case. If by their very nature, the offences under sections 420, 468, 471 and 120B cannot be regarded as having been committed by a public servant while acting or purporting to act in the discharge of official duty, the same logic would apply with much more vigour in the case of offences under the PC Act. Section 197 of the Code does not carve out any group of offences that will fall outside its purview. Therefore, the observations contained in para 50 of the decision in Parkash Singh Badal cannot be taken as carving out an exception judicially, to a statutory prescription. In fact, Parkash Singh Badal cites with approval the other decisions (authored by the very same learned Judge) where this Court made a distinction between an act, though in excess of the duty, was reasonably connected with the discharge of official duty and an act which was merely a cloak for doing the objectionable act. Interestingly, the proposition laid down in Rakesh Kumar Mishra (supra) was distinguished in paragraph 49 of the decision in Parkash Singh Badal, before the Court made the observations in paragraph 50 extracted above.

51. No public servant is appointed with a mandate or authority to commit an offence. Therefore, if the observations contained in paragraph 50 of the decision in Parkash Singh Badal are applied, any act which constitutes an offence under any statute will go out of the purview of an act in the discharge of official duty. The requirement of a previous sanction will thus be rendered redundant by such an interpretation."

29. In **Teni Yadav v. State of Bihar**[11], the Hon'ble Supreme Court held as follows:

"11. ..... The burden is always on the prosecution to prove its case beyond reasonable doubt on the basis of legally admissible evidence and when the offence charged is gruesome or diabolic, much higher,

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[10] 2023 SCC OnLine SC 900

[11] 2023 SCC OnLine Pat 2239

degree of assurance is required to infer the guilt of the accused. This principle is succinctly explained by the Hon'ble Supreme Court in Mousam Singha Roy v. State of W.B. reported in (2003) 12 SCC 377, paragraphs 27 and 28 of which reads as under:—

"27. Before we conclude, we must place on record the fact that we are not unaware of the degree of agony and frustration that may be caused to the society in general and the families of the victims in particular, by the fact that a heinous crime like this goes unpunished, but then the law does not permit the courts to punish the accused on the basis of moral conviction or on suspicion alone. The burden of proof in a criminal trial never shifts, and it is always the burden of the prosecution to prove its case beyond reasonable doubt on the basis of acceptable evidence. In the similar circumstance this Court in the case of Sarwan Singh Rattan Singh v. State of Punjab (AIR 1957 SC 637) stated thus (AIR p.645,para 12)

"It is no doubt a matter of regret that a foul cold-blooded and cruel murder should go unpunished. There may also be an element of truth in the prosecution story against the accused. Considered as a whole, the prosecution story may be true; but between 'may be true' and 'must be true' there is inevitably a long distance to travel and the whole of this distance must be covered by the prosecution by legal, reliable and unimpeachable evidence before an accused can be convicted.

28. It is also a settled principle of criminal jurisprudence that the more serious the offence, the stricter the degree of proof, since a higher degree of assurance is required to convict the accused."

12. Similar is the observation of the Hon'ble Supreme Court in Shivaji Sahebrao Bobde v. State of Maharashtra ((1973) 2 SCC 793 : AIR 1973 SC 2622) whether it is held that certainly it is a primary principle that the accused 'must be' and not merely 'may be' guilty before a court to convict and the mental distance between 'may be' and 'must be' is long and divides vague conjunctures from sure conclusions."

Bogus Colleges:

30. As per Ex.P763 report submitted by P.W.133 to the ACP the following Colleges were not in existence.

1. Key Junior College
2. Shivaji Degree College, Lakdikapul
3. Chanakya College, Krishna Nagar
4. Alekhya Junior College, Nagarjuna Nagar
5. DVR College, Jubilee Hills
6. S.D.College, Laxminagar
7. Sapthagiri College, Srinivas Nagar
8. R.S.M.College, Langrhouse
9. Global College, Lalitha Nagar
10. Mesco College, Keshava Nagar
11. R.s.M.College, Sai Nagar
12. Apex College, Sai Nagar
13. Royal Junior College, S.R.Nagar
14. Oxford College, Barkathpura
15. Red rose College, Vikasnagar
16. Gabriel College, Vikasnagar
17. Al-ameen Junior College, Erramanjil Colony
18. Al-ameen Degree College, Nadeem Colony, Toli Chowki;
    and
19. Samatha Degree College, Hanuman Bowli, Hyderabad.

31. As per Ex.P800 report submitted by P.W.141 P.Devender to the ACP the following Colleges were not in existence.

1. Citizen Junior College, Nampally
2. Aditya College, Gaganmahal
3. Priyanka Gandhi College for Women, Narayanguda
4. BNS College, Narayanaguda

32. It is quite interesting to note that PW-133 in his report Ex.P763 has mentioned both Al-ameen Junior College and Al-

Ameen Degree College as the non existing Colleges though in his Ex.P237 letter the Registrar, Osmania University has mentioned that Al-Ameen Degree College was in existence.

33. According to the prosecution, there were bills pertaining to the above mentioned 25 colleges which were non existent and floated by A1, assisted by other accused for the purpose of claiming scholarships. To prove that the colleges did not exist, the prosecution examined P.W.9, who worked as Joint Secretary, Board of Intermediate Education. PW9 issued letter Ex.P214. In the said letter, he stated that 13 colleges have never applied for recognition.

34. The other witness P.W.12, who was the Secretary of A.P.State Council of Higher Education, Hyderabad has issued letter Ex.P235 addressed to the Registrar, Osmania University regarding affiliated colleges of Osmania University. Out of the list of 28 colleges which were named in the letter addressed by P.W.12, three of the colleges were affiliated and accordingly Ex.P237 reply was given.

35. The prosecution also examined P.W.133, police constable, who verified and submitted Ex.P763 report that there were no such colleges. Similarly, P.W.141, another police constable submitted Ex.P800 report and stated about non-existent colleges. Under Ex.P763, 19 colleges were verified and submitted that they were non-existent. Under Ex.P800, four colleges were shown as non-existent. However, P.W.133 in Ex.P763 stated that two of the colleges namely Al-Ameen Junior College, Erramanjil Colony and Al-Ameen Degree College, Nadeem Colony, Tolichoki, which were at serial Nos.17 and 18 on Ex.P763 report were existing. On the basis of the said letters issued by P.Ws.9, 12, 37, 133 and 141, learned Special Judge concluded that the colleges are bogus.

36. P.W.9, who worked as Joint Secretary in the Board of Intermediate stated that there will be a list of recognized colleges in the Board. However, the said list was not handed over to the police. Witness further admitted that the list of recognized colleges maintained in the Board would be authentic record to ascertain whether colleges were existing or

bogus colleges. He further stated that he was not aware about the list of recognized colleges prior to his joining the Intermediate Board. The witness joined in the year 2002 and the alleged bogus claims were prior to year 2002. The witness further admits that every year colleges will be deleted and new colleges will be added and he is not aware about the colleges prior to his joining in the year 2002.

37. On similar lines, P.W.12 who was the Secretary in A.P.State Council for Higher Education stated that there would be an official list of the colleges affiliated to the Osmania University and will be available in the University. What were the records referred to by P.W.12 while certifying that certain colleges did not exist was not stated by P.W.12. P.W.12 also admitted that there will be a list of recognized colleges available with the Higher Education Department. However, both P.Ws.9 and P.W.12 failed to provide the list of colleges for relevant the years 1990-2001, which was the alleged period of claims. When the list of colleges was available, no reasons are

given as to why the said official records were not collected by the police or handed over by the witnesses.

38. Having admitted that the record was available regarding existence of colleges for non-production of the said record, an adverse inference has to be drawn under Section 114 (g) of the Indian Evidence Act.

> "114((g) That evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it;"

39. The other two witnesses are Police Constables P.W.133 and P.W.141 who also gave letters that colleges were not existing. There is no reason why the Investigating Officer had to rely on the police constables of his department to certify non-existence of colleges. Investigating Officer had access to the official records of both the departments of higher education, the Intermediate Board and also Osmania University records where the list of colleges would be available.

40. Another aspect is the authenticity of existing colleges. The prosecution has marked Ex.P402 through P.W.21. P.W.21

worked as District Social Welfare Officer. She admitted in her examination that the list of colleges enclosed to Ex.P402 was for the year 1990-2000. In the said list, the names of the 25 alleged bogus colleges find place. It is brought on record that A17 had prepared Ex.P402, and addressed to the Deputy Pay and Accounts Officer on 21.10.1999 even prior to the registration of crime in the present case. In this case, crime was registered on 13.05.2002. In fact, A17, who died during trial addressed Ex.P402 and lodged a complaint with Jubilee Hills Police on 13.05.2002, stating that she found two forged bills in the name of DVR college, Jubilee Hills and the said bills were submitted and signatures of staff members of Deputy Director, Social Welfare Department were fabricated. The said complaint of A17 was registered as crime No.151 of 2002 and later investigation was handed over to the CCS, DD, Hyderabad. During the course of investigation, A17 was added as accused. No evidence is placed by the prosecution in the Court below that A17 had fabricated Ex.P402 in conspiracy with the other accused. There is no evidence to that effect either by the Investigating Officer or any other witness. The

said document is not disputed by the prosecution, in which the names of 25 alleged bogus colleges names find place. The witnesses do not say that ExP402 was false and fabricated.

41. P.W.2 is the Pay and Accounts Officer, who worked from July, 2001 in Pay and Accounts Office. P.W.4 is also an auditor in the Pay and Accounts Office, who worked in the scholarship wing. Both of them state that the list of colleges will be available in the Pay and Accounts Office. However, the prosecution has failed to collect the said documents reflecting the names of colleges.

42. The evidence of existence of colleges is based on assumptions and letters given by witnesses which have no sanctity in the back ground of admission of witnesses that the list of colleges would be available and the said documents, for the best reasons known, were not collected during investigation and not placed before the Court below to infer that the colleges were non existent. The Investigating Officer (P.W.143) has committed blatant error in not collecting the said record. In the absence of such record, it cannot be

concluded that the colleges were not existent on the basis of uncorroborated testimony of witnesses. Burden is always on the prosecution to discharge its burden of proving a fact by reliable evidence.

Bills:

43. Bills were raised and cheques issued in the Pay and Accounts Office. The prosecution has examined six witnesses from the Pay and Accounts Office. The witnesses, the documents marked and against which accused evidence is adduced, is tabulated below.

Sl.No.	Name of the witness	Exhibits marked	Details of Exhibits	Against accused
1.	Sathinagi Reddy, PAO (P.W.2)	P13-P81	Bills	A3,7,10,34,39,22,35
		P82-P116	Cheques	A20, 10,39
		P117-P131	Bills copies	A4, 39, 34, 20, 41
		D4	GOMs.No.88	
		D5-D8	PAO manuals	
		D9/10	Proceedings	

2.	Y.Annapurna, Auditor (P.W.4)	P20-23	Bills	A43
		P28-31	Bills	A4, 34, 39
		P42, 43	Bills	A4, 39, 34, 20, 41
		P45	Bills	A4, 39, 34,20, 41
		P56-P61	Bills	A4, 34, 39
		P68-P75	Bills	A4, 34, 39
		P80	Bills	A4, A39
		P19	Bills	A4
		P67, 68	Bills	A4, A34
		P133-196	Bills	A4, 34, 39
3.	P.Srinivas Rao, Asst.Auditor (PW5)			
4.	Raghavendra Chary Asst.PAO (PW6)			
5.	V.Ambigekar, Auditor (P.W.8)			
6.	K.Jaiswan, Assistant Auditor (PW10)	P215-224	Register of Bills	A31

44. The crucial witnesses for the prosecution P.Ws.2 and 4 have identified the signatures and writings on the bills as that of the accused, who are mentioned in column No.5. However, either P.W.2 & P.W.4 or any of the witnesses stated that the cheques were issued in respect of bogus colleges or non-existent colleges. Further, it is not the case of the witnesses that bills identified by them were forged by any of the accused. Even the sanction orders in the bills were not disputed by the witnesses and did not say that the signatures in the sanction orders did not tally with the specimen signatures which were available in the office. It was further stated by PWs.2 and 4 that the required formalities and procedures were in accordance with PAO manuals (Exs.D5 to D8) and the corresponding government orders were followed in respect of the bills that were raised and also the consequent cheques that were issued.

45. PWs.2 and 4 stated that the signatures of the sanctioning authorities from the department DSWO, DPCW and DPWO available in the office were not tallying. However,

the said officers, who are the sanctioning authorities were examined as PWs.32, 33, 41, 42, 46 and 105 in the case. The said witnesses have denied their signatures on the documents which are sanctioning orders in the bills.

46. The Investigating Officer in the said circumstances ought to have collected the specimen signatures of the said witnesses P.W.32, 33, 41, 42, 46 & 105 and the accused. The specimen should have been sent along with all the bills for the purpose of handwriting examination and opinion. The specimen signatures of the sanctioning officers were available in the department and also the bills. No reasons are given as to why the documents were not sent to hand writing expert to rule out that the witnesses have not signed on the said sanction documents. Though the witnesses have entered into the box and stated that the signature is not their signature, however, it becomes necessary in the background of the bills being passed in the department over a period of several years and the accused denial of endorsing any fabricated bills.

47. None of the witnesses have stated as to who presented the bills in the office and who collected the tokens thereof for collecting the Government cheques.

48. According to the procedure, the funds are allotted after identifying the colleges and students. All the bills and cheques are subjected to internal audit and also the audit by the officers of the Accountant General's office from time to time. It is highly suspicious as to why the alleged fraud or claim was not detected over the years.

49. The prosecution has resorted to marking the documents without proving that there was any illegality in the said bills. Merely marking the documents would not be suffice, more particularly, in the back ground of the prosecution failing to prove beyond reasonable doubt that the colleges were non-existent or floated by A1 and A2.

50. Witnesses of backward class department.

Sl.No.	Name of the witness	Exhibits marked	Details of exhibits	Against accused

1.	K.Ashok Kumar (P.W.1) DBCWO	P1	GOMs.No.42	
		P2	List of officers	
		P3-P8	Signatures	A6
		P10-P12	Bills	A6
		D1-D3	161 Cr.P.C	
2.	E.V.Narsimha Reddy (P.W.32) DBCWO	P46-P50	Sanctions	Denies his signature
		P473-P477	Sanctions	Denies his signature
		P478-/478	List of students	Denies his signature
3.	Sunki Srinivasulu (PW 105) DBCWO	P32-P34	Bills	Denies his signature

51. P.W.1, P.W.32, P.W.105 were examined from the Backward Class Welfare Department. The signatures of A6, list of students were identified by the witnesses. None of the witnesses have attributed anything against any of the accused. The specimen signatures of the witnesses would be available with the PAO's office, according to them. However, no

complaint was received from the Pay and Accounts Office about any forgery committed. The witnesses only identified the writings and signatures of the accused. However, they have admitted that there was nothing wrong with the bills. Though P.W.32 and P.W.105 denied their signatures on documents, the documents ought to have been subjected to hand writing examination test and opinion by an expert. No reasons are given why the documents were not subjected to expert opinion. As seen from the documents filed, there are 'Q' markings of signatures indicating that all the disputed documents such as cheques, bills etc., were sent to a hand writing expert but no opinion was produced by the prosecution. No reasons are given by the prosecution for such non filing of opinion.

52. The following are the witnesses belonging to Social Welfare Department.

Sl.No	Name of the witness	Exhibits marled talks about	Details of Exhibits	Against accused

1.	R.V.Prasad Raju (P.W.3)	Service records	Of accused	A1,2,5, 17
2.	G.Anantha Reddy (P.W.21)	P385/386	Endorsement/Records	A1, 2, 5, 17
		P387-P400	A2	
		P401	A5	
		P402-409	List of colleges	A17
3.	N.Yadiah (P.W.29)	P402-P409	Letter	A17
4.	Dhara Chandraiah (PW33)	P480-P488, D54	Sanctions	Denies his signature
5.	J.Roopa Kalpana (P.W.39)	P402-P409	List of Colleges etc	A17
6.	M.Vijaya (P.W.40)	P402-P409	List of Colleges etc	A17 denies his signature
7.	A.Vijaya Kumar (PW41)	P533-P542	Sanctions	A5
8.	M.S.R.Bharath Kumar (P.W.42)	P543-P547, D67	Sanctions	Denies his signature
9.	K.Chandra Shekar (P.W.43)	P547	Letter	A17

10.	C.Sridhar (P.W.46)	P550-P557, D63		

53. The witnesses stated that the Department maintains list of approved colleges for grant of scholarships. The said list of approved colleges was not collected by the Investigating Officer. None of the witnesses stated that the names of the colleges whose bills were passed with sanction proceedings were not present in the approved list of colleges available with them. Mysteriously, relevant documents were not collected though available such as list of colleges and students, which was available in the department.

54. P.Ws.33, 41, 42 and 46 who worked as District Social Welfare Officers in the department stated that their signatures were forged in the bills. However, no steps were taken to send the bills to the handwriting expert. The necessity to send the bills to the handwriting expert arises for the reason of the bills being passed over the years. Though specimen signatures of officers of Social Welfare Department were available in the PAO's office, at no point of time, any complaint was made

regarding the signatures. As already stated relevant documents were sent for hand writing examination by an expert but opinion is not filed.

55. P.W.10 and 20 were examined from the Tribal Welfare Department. P.W.10 marked Exs.P197, 208 proceedings, Exs.P209 to 213 sanction proceedings pertaining to A8, A9 and A42. The witnesses accept that their department maintains the list of approved colleges for grant of scholarships. However, none of the witnesses have stated about the non-existence of any of the colleges in the bills which were shown to them. The prosecution ought to have taken steps to collect the list of documents from the Tribal Welfare Department which admittedly was available with them. During the course of investigation, material documents were not collected and during the course of trial, the Public Prosecutor has not taken steps to ascertain from the witnesses regarding the non-existent colleges. As already stated, the evidence adduced to show that the colleges were non-existent

is suspicious and not based on actual records and registers available in the department maintaining the list of colleges.

56. The learned Public Prosecutor ought to have questioned the witnesses whether the colleges were existing or not during course of trial. It would not amount to opinion of the witness but would be on the basis of record. The documents were marked through witness but nothing was adduced from the witnesses to know whether the contents of documents were correct or not. In cases of circumstantial evidence, the circumstances relied upon by the prosecution can be linked and convince the Court about culpability of the accused. However, in the present case, the proof of non-existence of colleges as provided by the prosecution is doubtful as discussed earlier.

BANK ACCOUNTS OPENED IN THE NAMES OF COLLEGES:

57. The following is the tabular form of the evidence adduced by the prosecution witnesses pertaining to the opening of various Bank Accounts.

Sl.No	Name of the witness	Name of college	Name of account holder	Exhibits P series	Nature of Exhibits
1.	ASN Murthy, Andhra Bank, Mehdipatnam (P.W.14)	SD college	K.Raju Reddy A12	P278	Account opening form
		Sapthagiri College	G.Srilakshmi (A13)	279	Account opening form
		Alekhya Junior College	K.Rajender	280	Account opening form
		DVR College	P.Rajashekar	281	Account opening form
		Chanakya College	P.N.Swamy	282-286	Account opening form
		RSM College		287-289	Statement etc.,
2.	DVSV Prasad, Andhra Bank (P.W.17)	Mesco Jr. College	Latha	358-362	Account opening form
		Global college	P.Balaiah	363-368	Account opening form
		RSM College	B.Rama Rao	366-368	Account opening form
3.	Dasi Paulson, Andhra Bank, Karvan (PW18)	Mesco Jr. college	Latha	358	Account opening form
		Global college	P.Balaiah	363	Account opening form
		RSM College	B.Rama Rao	366	Account opening form

4.	M.Lakshmi Nrayana, SBH, Raidurg (PW22)	Al-Ameen Jr.College	Principal	410-416	Account opening form
		Apex College	Principal	417-422	Account opening form
		Al-Ameen Degree College	Principal	423-430	Account opening form
		Oxford College	Principal	431-433	Statement ledger
		Royal College	Principal	434-439	Account opening form
		BNS college	B.P.Rao	440-444	Account opening form
		Gabriel College	Principal	445-449	Account opening form
		Red Rose college	Principal	450-455	Account opening form
5.	KVS Raja, SBH, Raidurg (P.W.23)	Al-Ameen Jr.College	Principal	410	Account opening form
		Apex College	Principal	417	Account opening form
		Al-Ameen Degree College	Principal	423	Account opening form
		Royal college	Principal	434	Account opening form
		Gabriel college	Principal	445	Account opening form
		Red Rose college	Principal	451	Account opening

					form
6.	Ashok Mohanlal, SBH, Raidurg (PW 27)	Apex College	Principal	417	Account opening form
		BNS college	B.P.Rao	440	Account opening form
		Royal college	Principal	434	Account opening form
		Gabriel college	Principal	445	Account opening form
		Red Rose College	Principal	451	Account opening form
		Oxford College	Principal	432	statement

58. The documents have been marked as mentioned in the above table which the prosecution relies on to state that A1 and A2 have opened the accounts. However, the documents are not certified under the Bankers Book Evidence Act. None of these Bank witnesses have made any endorsements on the account opening forms and specimen signature cards of the alleged College Accounts. All the witnesses stated in their evidence that all the required formalities and procedures as provided by their Manual of Instructions have been followed while opening of the College Accounts by the concerned

Principals of those colleges. None of them stated that the Bank Accounts spoken to by them are Bogus or impersonated Accounts of non-existing colleges as alleged by the prosecution. They have also stated that all the cheques of various colleges would have been honoured only after the signature appearing on them tallied with the specimen signatures available in their Bank. Except making a vague statement that A1 and A23 operated all the alleged college accounts, none of them stated specifically that A1 or A23 had filled up any vouchers or credit slips. No such documents were collected and sent to a hand writing expert. None of the witnesses have direct knowledge of the accused opening the accounts.

59. The pay in slips pertaining to the deposit of Government Cheques into these alleged accounts are also not marked as Exhibits in this case. With regard to the withdrawals of amounts from these College Accounts, the prosecution did not produce any evidence as to who received the self cheques marked as Exhiits and issued tokens, who passed and verified

the signatures on them with the specimens available, who made the respective entries in the ledger boks and who made payments arising out of these self cheques and as to who returned such tokens and actually received the amounts thereof. With regard to Account payee cheques, all these Bank Witnesses through whom such cheques are marked simply state in their cross-examination that all such cheques whether self cheques or account payee cheques were passed and cleared only after the signatures appearing on them were tallied with the specimens available in their Bank.

60. As seen from the chief examination of P.W.14, P.W.17 and P.W.22, all of them were not working in those respective Banks at the time of these College Accounts were opened in their Bank and they admitted in their cross-examination that they have no personal knowledge of opening those College Accounts.

61. P.W.114 is an additional witness examined by the prosecution who speaks of two alleged college Accounts pertaining to SD college and Sapthagiri College marked as

Exs.P278 and P279. Witness says that A1 introduced the account holders of Ex.P278 and P279 to the Bank. However, A1 was operating the Accounts. In the cross-examination he says that he was giving evidence only on the basis of records. A1 signed as an introducer marked as Ex.P278(a) and P279(a) which is identical to the signature of A1 in Ex.P322 which is account opening form in Canara Bank, Kothur Branch. He further admits that the signature and photograph of A12 and A13 are there in Ex.P278 and P279 respectively as Account Holders. P.W.114 having admitted that he was deposing on the basis of record, one fails to understand how the witness can identify the handwriting of A12 and A13. Sending the documents Ex.P278(a) and 279(a) would have determined the operation of accounts. Both A12 and A13 were acquitted.

62. P.W.114 further admits that A1 must have attended the Bank on that day as an Introducer. All the transactions pertaining to the two college Accounts are legal and there is nothing illegal in them. A1 was attending the Bank as he was

having personal accounts of himself and his family members and as such he knew him as a valued customer.

63. Ex.P358 to P373 are in respect of College Accounts in Andhra Bank, Karwan. The prosecution examined P.W.17 and P.W.18. P.W.17 states that he worked as Branch Manager of Andhra Bank from 27/12/2001 to 9/9/2003. Ex.P358, P363 and P366 accounts were opened during the tenure of A18 and admits that he has no personal knowledge as to which person has actually operated the said Accounts. P.W.17 stated that as per his enquiry it was A1 who operated the three Accounts. P.W.17's evidence about A1 operating account is hearsay evidence.

64. P.W.17 admits that the space where the Bank Manager has to sign is left blank in Ex.P358, P363 and P366 and that he has no personal knowledge of the documents spoken to by him and his evidence is based on records and also that some of the accounts he spoke were also closed by the time he took charge as Bank Manager.

65. P.W.142, the Investigating Officer stated that P.W.14 admitted that he did not know A1. P.W.15 stated that he knows A1 as a valued customer. P.W.142 admitted during cross-examination that *"PW.14 and 15 have not stated before me that one Karunakar (P.W.114) was the person who was authorized the opening of accounts on behalf of S.D.College, Sapthagiri College, Alekhya College, D.V.R College, Chanakya College and SRM College covered by Exs.P278 to P289. PWs.14 and 15 did not state before me that one Sura Giddayya (P.W.109) and S.Anurdha (P.W.110) were the persons who dealt with the transactions pertaining to the above colleges covered by Exs.P278 to P289. I did not examine P.Ws.109, 110 and 114."*

66. P.W.142 further admitted during cross-examination:

> *"P.W.17 did not give the name of the account holder 389 as Laxmi. P.W.18 also stated that the introducer for the above said three accounts covered by Exs.P358 and P365 was A/c.No.389. P.Ws.17 and 18 did not state before me that the signatures of the introducer in Exs.P358, P363 and P366 is different from the signature of the account holder of 389 in their bank. The account opening date is not noted at the top in Exs.P358, P363 and P366 but the date stamp is affixed and it indicates 21.11.2001, as the date of opening of those accounts, Ex.P358, P363 and P366 do not contain any signature of the bank official but at the right top there are*

initials which could be the initials of bank officials. I did not try to find out as to which official of the bank put those initials."

67. P.W.114 admitted during cross-examination that A1 must have come to the bank on that day as an introducer for the two accounts under Ex.P278 and P279 in the name of A12 and A13. He further admits that the Accounts covered by Ex.P278 and P279 were opened after all the legal requirements for opening of Accounts as provided by the Manual of Instructions were satisfied and that there was no illegality in opening of the two Accounts. P.W.114 admitted that as long as he was in that Branch, it was not brought to his notice that A1 was operating the accounts covered by Ex.P278 and P279 and that is the reason why he had not made any complaint to the police against A1 in respect of forgery and impersonation. The admission by the Investigating Officer/P.W.142 extracted above and P.W.114 would go to show that only documents were marked without having any personal knowledge of A1 transacting business in the said accounts.

68. There is absolutely no reliable evidence to infer that A1 had transacted business in the College Accounts marked as

Exhibits P280 to P289, P358, P363, P366, P410, P417, P423, P431, P434, P440, P445, P451 and as an introducer in respect of Ex.P278 and P279.

CHEQUE TRANSACTIONS IN THE COLLEGE ACCOUNTS:

69. Though this Court found that the prosecution failed to establish that A1 transacted business in the college accounts, it is necessary to discuss the evidence adduced by prosecution regarding cheques issued in respect of the college accounts to establish that A1 had issued the cheques pertaining to the college accounts.

70. Charge No.21 refers to the self cheque No.214254 dated 15.12.1998 for Rs.80,000/- issued by the Principal, Sapthagiri Junior College and marked through P.W.14 who took charge only on 1/6/2002 as Manager of the Bank and he did not attribute anything against A1 in this regard. No other witness including the I.O i.e., P.W.142 stated anything in respect of this Cheque.

71. Charge No.22 refers to the Bearers Cheque bearing No.864552 dated 28.09.1999 for Rs.4,70,000/- issued by the Principal, S.D.College in favour of Andhra Bank, Karwan Branch marked through P.W.18 as Ex.P393. P.W.18 did not say anything about clearing and crediting of the said cheque in A/c.No.8826. P.W.18 did not say that A1 issued this cheuqe and that the said amount was credited into SB A/c.8826 of Ramavath Kaneef Raj, son of A1.

72. The Charges No.23, 24, 28 to 32 framed are in relation to certain cheques marked as Exhibits P414, P415, P428, P427, P429, P426 and P413 through PW 22 but he did not say that A1 issued these chques and withdrawn the amount thereof. The said cheques should have been sent to an expert to determine whether A1 issued the cheques.

73. Charge Nos.23 and 24 refer to Ex.P414 and P415 respectively which are self cheques alleged to have been issued by the Principal, Al-Ameen Junior College, Nadeem Colony, Hyderabad. P.W.22 and P.W.142 did not specifically say that A1 issued these self cheques and withdrew the amounts

thereon. No other witness stated anything against A1 in respect of these two cheques. However the Principal of the college was examined to speak about the account and the cheques. Except denial of the transactions, nothing was attributed to A1. It cannot be assumed that A1 issued the cheques only for the reason of the Principal of the college denied the cheques.

74. Charge Nos.28, 29 and 30 refer to Ex.P428, P427, mand P429 respectively, which are account payee cheques alleged to have been issued by the Principal, Al-Ameen Degree College, Nadeem Colony, Hyderabad. P.W.142 did not state whether these cheques were encashed after clearing. But P.W.22 says that all these cheques were honoured on legal tender and there is nothing illegal in them. No where in these three cheques A1's name or signature is found. P.W.38 who received this cheque vide Ex.P428 from A1 admits in his cross-examination that the said cheque was issued by the Principal of Al-Ameen Degree College and it was cleared on 12/6/99 while he admits that in the cash book marked as P532, the

said entry was made on 15/4/99 and Ex.P428 is dated 27/4/99.

75. Charge No.29 refers to Ex.P427 and P22. PW142 did not state anything in reference to this cheque against A1. PW30 states that he worked as Branch Manager of Amangal Branch from September, 2001 to June, 2003. According to him Ex.P427 is an account payee cheque in favour of Manager, Sangameshwara Grameena Bank, Karkalpahad dated 16/3/99 and it was issued by Principal, Al-Ameen Degree College, Nadeem Colony, Hyderabad for Rs.2 lakhs and it was encashed by clearing.

76. Charge No.30 refers to Ex.P429 and PW22 and PW142 did not attribute anything against A1 in this regard. P.W.31 says in chief examination that he worked in the DCC Bank, Amangal from December, 2001 to June, 2003, while the said cheque i.e., Ex.P429 is dated 11/2/99 for Rs.1 lakh issued by the Principal, Al-Ameen Degree College, Nadeem Colony, Hyderabad in favour of Manager, DCC Bank, Amangal and it was encashed through clearing. In the cross-examination

P.W.31 admits that when Ex.P429 was honoured he was not in that Branch and he has no personal knowledge about the presentation of the said cheque in their bank.

77. Charge Nos.31 and 32 refer to ExP426and P413, which are bearer cheques issued in favour of Smt.Vijayalakshmi alleged to have been issued by Al-Ameen Degree and Junior College respectively. P.w.22 and P.W.142 did not state that A23 came to the bank on that day and withdrew the amounts.

78. Charge Nos.25, 26 and 27 refer to Ex.P372, P360 and P361 respectively relating to RSM and Mesco Colleges accounts in Andhra Bank, Karwan. P.W.17 only stated that the Ex.P372 is a bearer cheque bearing No.471102 dated 11/9/96 is in favour of R.M.Naik for Rs.25,000/- and it was issued by the Principal, RSM. The specimen signature card pertaining to this account is Ex.P370 which shows one B.Purna Rao as the Principal, RSM College, who opened and operated this account. The said B.Purna Rao is neither cited as witness nor an accused in this case. The prosecution has

failed to connect A1 with the transactions in the college accounts by adducing direct evidence.

79. The Hon'ble Supreme Court in **Kailash Gour v. State of Assam**[12], has held that: (SCC pp.50-51, para 44)

> *"44. The prosecution, it is axiomatic, must establish its case against the accused by leading evidence that is accepted by the standards that are known to criminal jurisprudence regardless of whether the crime is committed in the course of communal disturbances or otherwise. In short, there can only be one set of rules and standards when it comes to trials and judgment in criminal cases unless the statute provides for anything specially applicable to a particular case or class of cases.*
>
> *24. In the present case, the cumulative effect of the aforesaid investigative lapses has fortified the presumption of innocence in favour of the respondent-accused. In such cases, the benefit of doubt arising out of a faulty investigation accrues in favour of the accused."*

80. The alleged scam is enormous in the context of involvement of officials/accused in fabrication of documents and the way the Government was cheated. However, the investigation has not collected direct evidence which was available and based investigation on assumptions and presumptions. Even during the course of trial, the prosecution has merely marked documents without connecting the links.

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[12] (2012) 2 SCC 34

The evidence is circumstantial in nature and the circumstances so elicited during evidence has to form a complete chain without there being any missing links or doubts that would be created when the case is viewed as a whole. The prosecution has resorted to marking documents through witnesses who had no knowledge about the execution of the said documents and deposed based on their information from others. It is not known as to why the said persons who had direct knowledge about the transactions were not examined. Merely marking documents will not suffice to read into the contents of the said documents and infer that the accused were responsible. The basis for the scam being floating of fake schools and fake names of students, however, the direct evidence available regarding details of schools in the departments, which witnesses admit as available, was not produced.

81. There cannot be any moral conviction of accused. Unless the burden is discharged by the prosecution proving the case beyond reasonable doubt, no conviction can be recorded. The

prosecution has placed heavy reliance on the alleged transactions in banks. The said bank officials had no direct knowledge and none of the witnesses said about withdrawal of the amounts by the accused or depositing of the cheques by the accused. The said cheques originated from the Pay and Accounts Office and en-cashed in the Bank. Serious doubts arise in the absence of proof of documents and absence of witnesses to speak about handing over of the cheques to the accused or the accused transacting business in the account. For the reasons best known, none of the documents were subjected to handwriting expert examination and no reasons are given why the said procedure which could aid in concluding the guilt or otherwise of the accused was not followed. The specimen signatures of sanctioning officer of bills were available in the Pay & Accounts Office but not collected during investigation. The register of tokens given to persons who present bills and collect cheques were available but not seized for reasons best known to the investigating officer.

82. A perusal of documents would show that most of the documents in the case were sent for FSL examination by a hand writing expert. It is evident since there were markings as 'Q' in all of the disputed documents. Markings of an expert are present, who encircled the disputed signatures and writings with blue and red pencils. Nothing is clarified by the Investigating Officer as to why documents were sent to an expert and no opinion was received. If received, why the said reports were not filed or having sent them, why the documents were taken back without opinion.

83. The prosecution has left yawning gaps in investigation and failed to prove their case beyond reasonable doubt by adducing admissible evidence. For the reasons in the foregoing paragraphs, the prosecution has failed to prove by reliable evidence that the offence was committed by the appellants herein, as such, benefit of doubt is extended to the appellants.

84. In the result,

85. Criminal Appeal No.674 of 2007 filed by A36 is allowed.

86. Crl.A.No.675 of 2007 filed by A24 is allowed.

87. Crl.A.No.703 of 2007 filed by A3 & A7 is allowed.

88. Crl.A.No.715 of 2007 filed by A42 is allowed.

89. Crl.A.No.743 of 2007 filed by A10 is allowed.

90. Crl.A.No.744 of 2007 filed by A5 is allowed.

91. Crl.A.No.749 of 2007 filed by A20, A22 & A41 is allowed.

92. Crl.A.No.752 of 2007 filed by A6 is allowed.

93. Crl.A.No.755 of 2007 filed by A4 is allowed.

94. Crl.A.No.756 of 2007 filed by A35 is allowed.

95. Crl.A.No.790 of 2007 filed by A1 is allowed.

96. Crl.A.No.1019 of 2007 filed by A2 is allowed.

Sd/- K. SRINIVAS RAO,
JOINT REGISTRAR

//TRUE COPY//

SECTION OFFICER

One Fair Copy to the Hon'ble Sri Justice K. SURENDER
(For His Lordships Kind Perusal)

To

1. The Special Judge Under the Prevention of Corruption Act for Speedy Trial of Cases of Embezzlement of Scholarship Amounts in Social Welfare Department, Etc., at Criminal Courts Complex, Nampally, Hyderabad (with records)
2. The Asst. Commissioner of Police,, CCS., DD., Hyderabad,
3. The Station House Officer , Humayun Nagar Police Station, Hyderabad.
4. The Superintendent, Central Jail, Cherlapally, Ranga Reddy District.
5. Two CCs to Public Prosecutor, High Court for the State of Telangana at Hyderabad. (OUT)

6. 11 LR Copies
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HIGH COURT

KSJ

DATED:17/10/2023

NOTE : L.R. Copy to be marked

Common Judgment

CRIMINAL APPEAL Nos : 674, 675 , 703, 715, 743, 744, 749 , 752, 755, 756, 790 & 1019 OF 2007

ALLOWING THE ALL CRL.APPEALS.